

DECISIONS OF

Pennsylvania Public Utility Commission

VOLUME 20



HARRISBURG, PENNSYLVANIA

1942

2. That a certificate, setting forth that the Public Utility Commission, after December 12, 1939, will no longer object to the rescission of the suspension of the registration of a Ford Sedan, Serial No. 184016081 or of the operator's license of Charles Russell, be filed with the Secretary of Revenue in accordance with the provisions of the Act of May 8, 1929, P. L. 1647.

A. 33342—APPLICATION OF DEPARTMENT OF HIGHWAYS OF THE COMMONWEALTH OF PENNSYLVANIA

D. A. 1—APPLICATION OF WILKES-BARRE CONNECTING RAILROAD COMPANY

APPLICATION DOCKET No. 33342, D. A. 1

Appropriation of Property—Evidence.

The measure of damages for property taken, injured or destroyed in the exercise of the power of eminent domain, is the difference between the market value of property before and after the taking.

Estimates as to the cost of rebuilding specific items of property or injury to particular uses affected by the taking (of property by eminent domain), are not recoverable or admissible as distinct items of damage, but such losses may become useful as elements bearing on the market value before and after the appropriation.

Paul Bedford for Wilkes-Barre Connecting Railroad Co.

James P. Harris for Borough of Kingston.

BY THE COMMISSION, *July 31, 1939:*

The petition of Wilkes-Barre Connecting Railroad Company, filed April 19, 1938, seeks determination of damages for property taken, injured or destroyed by reason of the abolition, in accordance with the Public Service Commission order, dated February 4, 1935, at A. 33342, of two half crossings at grade, at points where the tracks of The Wilkes-Barre Railway Corporation cross Market Street (State Highway Route No. 11) in the Borough of Kingston, Luzerne County, and also by reason of the reconstruction, in accordance with the Public Service

Commission order, dated September 24, 1935, at A. 33894, of the bridge which carries the tracks of Wilkes-Barre Connecting Railroad Company over Market Street within the limits of the aforesaid improvement.

Our order nisi dated April 25, 1939, at A. 33342, D. A. 1, denies the prayer of the petition for the reason that the alleged damages have not been proven by competent and legal evidence, and provides that, unless exceptions are filed thereto by Wilkes-Barre Connecting Railroad Company, within 15 days after service thereof, the order nisi shall become the final order in this proceeding. Service of the order nisi was accepted on behalf of Wilkes-Barre Connecting Railroad Company on May 1, 1939.

On May 17, 1939, the railroad company filed exceptions, dated May 13, 1939, to the order nisi of the Commission contending that the Commission erred in finding that damages have not been properly proven and denying the petition in respect to the 50 feet of sidewalk directly beneath petitioner's viaduct; that the measure of damages for the destruction of said 50 feet of sidewalk is not the difference between the market value of the property before and after the taking, and that the only measure of damages for the destruction of said sidewalk is the cost of replacement thereof.

The petitioner further contends that the Public Utility Commission erred in finding that damages have not been properly proven and in denying the petition in respect to the 408 feet of sidewalk extending along petitioner's land, and that petitioner submitted at hearing the precise testimony required in accordance with the Commission notices of said hearings.

All evidence adduced at the hearings was carefully considered in arriving at the conclusion in this proceeding. As stated in our order nisi, considerable testimony was introduced at the hearing held in this proceeding for the purpose of showing that a portion of the petitioner's property was taken, injured or destroyed in the execution of the work ordered by the Commission. This testimony includes detailed estimate of the cost of replacing the alleged damaged sidewalk; however, no testimony was offered to show the market value of the property before and after the taking, nor any testimony offered from which we could determine, with a reasonable degree of accuracy, the extent and measure of the alleged damages.

It was pointed out in our order nisi that the Courts have repeatedly ruled that the measure of damages for property taken, injured or destroyed in the exercise of the power of eminent domain is the difference between the market value of property before and after the taking. This principle is restated in the case of *Hahan, et al. v. City of Bethlehem*, 322 Pa. 129 (1936).

“Defendant complains that plaintiff was allowed to introduce in evidence estimates as to the cost of moving the house and certain trees on the property, and also the cost of laying a sidewalk in front of the premises. All of this testimony, however, was offered subject to the express limitation that it was being presented, not as an independent element of damage, but as a matter to be taken into consideration in arriving at the difference in the fair market value of the property before and after the taking, and the learned trial judge charged the jury to the same effect. There was therefore no violation of the well established principle expressed in *Westinghouse Airbrake Co. v. Pittsburgh*, 316 Pa. 372, 375; that ‘Estimates as to the costs of rebuilding specific items of property or injury to particular uses affected by the taking, are not recoverable or admissible as distinct items of damage, but such losses may become useful as elements bearing on the market value before and after the appropriation.’ The same rule was applied in *Bridgman Realty Corp. v. Philadelphia*, 317 Pa. 449.”

It has frequently been the practice, when listing cases of this character for hearing, for the Commission to suggest that, in addition to any other relevant information, testimony be adduced upon certain questions. The fact that Wilkes-Barre Connecting Railroad Company has submitted testimony tending to answer all the particular questions listed in our notices of hearings in this proceeding, does not relieve the petitioner of the burden of proving its damages.

Upon full and careful consideration of the matters and things involved, we are of the opinion and find that the evidence supports the order nisi; **THEREFORE,**

NOW, to wit, July 31, 1939, IT IS ORDERED as follows:

(1) That the exceptions filed by Wilkes-Barre Connecting Railroad Company to the nisi order, dated April 25, 1939, be and the same are hereby dismissed.

(2) That the nisi order dated April 25, 1939, be and is hereby made absolute.